

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012110446 (Primary)

v.

SAN LUIS COASTAL UNIFIED SCHOOL
DISTRICT,

SAN LUIS COASTAL UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2012080851

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING DISTRICT'S
MOTION TO LIMIT ISSUES TO TWO
YEARS PRIOR TO DATE OF FILING

On August 27, 2012, the San Luis Coastal Unified School District (District) filed a due process hearing request (complaint) in response to Student's request for an independent educational evaluation (IEE), which was designated Office of Administrative Hearings (OAH) case number 2012080851.

On November 15, 2012, Student filed a complaint alleging generally that District denied Student a free appropriate public education (FAPE) by failing to assess Student for speech disorders or providing speech services, which case was designated OAH case number 2012110446. The cases were consolidated.

On February 4, 2013, by order granting leave to amend, Student filed an amended complaint alleging multiple procedural and substantive violations of Student's rights under the Individuals with Disabilities Act (20 U.S.C. § 1400, et seq. (IDEA)) over the past three school years.

On March 1, 2013, District filed a motion to limit issues to two years prior to the filing of Student's complaint. On March 4, 2013, Student filed opposition.

APPLICABLE LAW

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....).

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445 (*J.W. v. Fresno*); *Breanne C. v. Southern York County School Dist.* (M.D. Pa. 2009) 665 F.Supp.2d 504, 511-512; *E.J. v. San Carlos Elementary School Dist.* (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or by the local educational agency's withholding of information that was required to be provided to the parent.

An individualized education program (IEP) for a disabled child is measured at the time that it was created. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Tracy N. v. Dept. of Educ., State of Hawaii* (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) This evaluation standard is known as the "snapshot rule." (*J.W. v. Fresno*, *supra*, 626 F.3d at p. 439.)

While the adequacy of the IEP document is evaluated from the perspective of the IEP team at the time it was written, "the implementation of the educational program is an ongoing, dynamic activity, which obviously must be evaluated as such." (*O'Toole v. Olathe Unified School Dist. No. 233* (10th Cir. 1998) 144 F.3d 692, 702.) Incidents occurring within the statute of limitations for failure to implement an IEP as written, or of notice of the need to reassess or modify an IEP, will support a due process claim. However, a parent may not bring a due process claim challenging the appropriateness of an IEP that was created outside the statute of limitations in the absence of an implementation issue, although the IEP document is in effect within the statute of limitations, as special education law does not recognize the doctrine of continuing violations as an exception to the two year statute of limitations. (See *J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269 (*Ambridge*).) As explained by the regulations from Secretary of the Department of Education implementing the IDEA, with respect to the two-year time period, it is "clear that a due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew, or should have known, about the alleged action that forms the basis of the due process complaint." (71 F.R. § 46540-01 at 46697 (August 14, 2006).)

DISCUSSION

Student's amended complaint alleges that District denied her a FAPE for the 2010-2011, 2011-2012 and 2012-2013 school years. Student expressly alleges that the IEP team meetings to plan her transition to high school for the 2010-2011 school year took place on March 19 and 23, 2010, and that the IEP team failed to take into consideration a privately assessment obtained by Parents in February 2010, failed to accurately determine Student's unique needs, failed to determine Student's then-present levels of performance, failed to draft appropriate goals, and failed to offer or provide appropriate services or placement. Student's amended complaint also alleges that the District in August 2010 disregarded Parent's private preparations for Student's transition to high school, and, after the 2010-2011 school year began, proposed reducing Student's mainstreaming time.

District contends that Student's issues for hearing are limited to those on or after November 15, 2010, two years prior to the date she filed her current complaint. In particular, District seeks to bar Student's Issues 1(b) through 1(i)¹ on the ground that although the IEP was implemented in the 2010-2011 school year, the IEP itself was created outside the statute of limitations. District contends the following issues are barred: (b) failure to identify Student's primary eligibility as autism, (c) failure to draft appropriate goals and objectives, (d) failure to offer appropriate instruction, services and supports, (e) failure to offer appropriate speech and language services, (f) failure to provide a one-on-one aide, (g) failure to conduct an appropriate behavioral assessment and prepare an appropriate behavior support plan, (h) failure to place Student in the least restrictive environment, or (i) failure to develop an appropriate transition plan for Student's entry into high school.

Student contends that District's motion to limit issues is, in fact, a motion to dismiss, and whether or not facts establishing an exception to the two-year statute of limitations exist is a matter for factual inquiry, rather than a defect on the face of the amended complaint, warranting denial of District's motion.

Student's Issues 1(b) through 1(i) challenge the appropriateness of the March of 2010 IEP and the information upon which it was created. In accordance with *Ambridge*, the appropriateness of the IEP is determined as of the date of the IEP itself, and not as a continuing violation that can be challenged every day of the period it is intended to cover. The last IEP addressing the 2010-2011 school year was created and offered in March 2010, well outside the limitations period for Student's complaint of November 15, 2010.

With regard to implementation, Student's allegation that District's failed to consider Parent's private transition preparations in August 2010 is also beyond the limitations period. Although Student's allegation that the District proposed reducing Student's time in general education classes throughout the 2010-2011 school year arguably contains facts regarding

¹ District does not contend that Student's Issue 1(a) alleging District's failure to assess Student in all areas of suspected disability is barred.

incidents that took place within the limitations period beginning November 15, 2010, but those facts are not clearly related to any of the claims at Issue 1(b) through Issue 1(i).

Under these circumstances, where Student has not alleged any basis for an exception to the statute of limitations in either the original complaint or amended complaint, it is appropriate to limit the issues to the period from November 15, 2010 through the date of filing. If Student desires to argue that an exception to the statute of limitations applies, she should file a request to amend the complaint to include allegations showing an exception to the two-year statute of limitations.

ORDER

1. District's motion to limit issues to two years prior to the date of filing OAH case number 2012110446 is granted. The only issues for hearing are those that occurred between November 15, 2010 and the date of filing.
2. If Student wants to raise issues that occurred prior to November 15, 2010, she must seek leave to amend her complaint to allege specific factual allegations that, if true, would demonstrate that an exception to the two-year statute of limitations applies.

Dated: March 11, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings